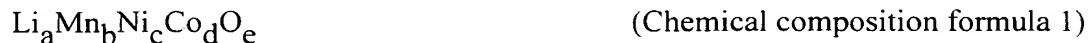


AMENDMENT TO THE CLAIMS

Please cancel claims 1-6 without prejudice or disclaimer and amend the claims as follows:

Claims 1-6 (Canceled)

7. (New) A positive active material comprising a composite oxide which is constituted of at least lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:



(wherein $0 < a \leq 1.3$

$$|b-c| \leq 0.05$$

$$0.6 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b+c+d=1).$$

8. (New) A positive active material comprising a composite oxide which is constituted of at least lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:



(wherein $0 < a \leq 1.3$

$$|b-c| < 0.03$$

$$0.8 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b+c+d=1).$$

9. (New) A non-aqueous electrolyte battery having a positive electrode containing the positive active material of claim 7, a negative electrode, and a non-aqueous electrolyte.

10. (New) A non-aqueous electrolyte battery having a positive electrode containing the positive active material of claim 8, a negative electrode, and a non-aqueous electrolyte.

11. (New) A non-aqueous electrolyte battery having a positive electrode, a negative electrode, and a non-aqueous electrolyte, characterized in that the positive electrode contains a lithium-manganese oxide (A) having a spinel structure and represented by the general formula LiMn_2O_4 and a lithium-nickel-manganese-cobalt composite oxide (B) having an $\alpha\text{-NaFeO}_2$ type layer structure and represented by the general formula $\text{Li}_a\text{Mn}_b\text{Ni}_c\text{Co}_d\text{O}_e$,

wherein

$$0 < a \leq 1.3$$

$$|b-c| \leq 0.05$$

$$0.6 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b+c+d=1.$$

12. (New) A non-aqueous electrolyte battery having a positive electrode, a negative electrode, and a non-aqueous electrolyte, characterized in that the positive electrode contains a

lithium-manganese oxide (A) having a spinel structure and represented by the general formula LiMn_2O_4 and a lithium-nickel-manganese-cobalt composite oxide (B) having an $\alpha\text{-NaFeO}_2$ type layer structure and represented by the general formula $\text{Li}_a\text{Mn}_b\text{Ni}_c\text{Co}_d\text{O}_e$,

wherein

$$0 < a \leq 1.3$$

$$|b - c| < 0.03$$

$$0.8 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b + c + d = 1.$$

13. (New) The non-aqueous electrolyte battery of claim 11, characterized in that the positive electrode contains the (A) and the (B) in a proportion (weight ration) of from 5:95 to 90:10.

14. (New) The non-aqueous electrolyte battery of claim 12, characterized in that the positive electrode contains the (A) and the (B) in a proportion (weight ration) of from 5:95 to 90:10.